

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO.269 OF 1989

For Approval & Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether reporters of local papers may be allowed to see the judgment ?
2. To be referred to the reporters or not ?
3. Whether their lordships wish to see the fair copy of the judgment ?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950, or any order made thereunder ?
5. Whether it is to be circulated to the Civil Judge?

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DEVUSANA SEWA SAHAKARI MANDALI LIMITED  
VERSUS  
UMEDBHAI MAGANDAS VALAND & ANR.

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Appearance:

MR GM JOSHI for petitioner  
None present for respondent No.1  
MR MA BUKHARI for respondent No.2

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Coram: MR.JUSTICE S.K. Keshote,J  
Date of decision: 10/07/2000

C.A.V. JUDGMENT

#. More than what it was necessary, the petitioner has

exceeded the limits. Originally, in the special civil application, relief has not been prayed for against the order of the Registrar of Cooperative Societies, Government of Gujarat, Ahmedabad, dated 5th June 1984, regarding payment of fees etc. on the restoration application etc.. But after filing of this petition, it was got amended and that challenge has also been incorporated therein. In my opinion it was not called for nor it was necessary. Be that as it may, the petitioner filed a suit being Arbitration Suit No.1269/84 before the Board of Nominees at Ahmedabad for recovery of Rs.38,264.29 against respondent No.1. The suit was fixed for hearing on 27.8.87. On that date, it was listed at sr.no.195 on the Board. There were total more than 150 matters on board on the said date. Amongst other matters there was one matter at sr.no.100 wherein same advocate who was appearing for the petitioner was appearing. It is the case of petitioner that as a matter of practice which is usually followed in the courts of Board of Nominees, only few matters are being heard on the particular day and the rest of the matters are adjourned to another date. On 27th August, 1987, the learned member of the Board of Nominees was having some part heard matters which were likely to go on and therefore all the advocates were informed that the rest of the matters would be adjourned and dates would be given later on accordingly. All such matters were supposed to be adjourned on that date and the dates fixed therein were to be informed later. The petitioner's advocate approached the office of the Board of Nominees on 3.9.87 on which date he was informed that no date was given as yet in the case. On further inquiry being made afterwards, the petitioner came to know that the suit was dismissed for default on 27th August, 1987. Against the order dated 27th August, 1987, the petitioner filed appeal being Appeal No.249 of 1987 before the Cooperative Tribunal at Ahmedabad. Notice of this appeal were given to respondents. However, on 9.12.88, that appeal came to be rejected by the Tribunal only on the ground that instead of appeal, the petitioner ought to have filed application for restoration of the matter. Hence this petition before this court.

#. The learned counsel for petitioner contended that on 27th August, 1987, the Presiding officer, Board of Nominees was busy in part heard matters and it has been made clear to the members of the Bar. Dismissal of the suit is wholly arbitrary, perverse and unjustified. It has next been contended that the suit was dismissed for default and against that order of dismissal of the suit of the learned Board of Nominees, the petitioner had

twofold remedies, out of which one is what it is suggested by the Cooperative Tribunal. However, in his submission, the learned Tribunal has committed serious error of jurisdiction in dismissing the appeal. The order of the Board of Nominees was appealable also. Contentions have also been made challenging the validity of the order of the Registrar of Cooperative Societies but as I do not consider it to be necessary in this matter to go on and decide the question of validity of this order of Registrar, Cooperative Societies, these contentions have not been referred and dealt with.

#. The respondent No.1 has not filed reply to the special civil application though he has been served with notice and this his conduct goes to show that he is not opposing this special civil application. The averments which have been made in this special civil application have not been controverted by respondents and at the cost of repetition, it is to be reiterated that the same are to be taken to be uncontroverted, meaning thereby, are to be taken to be true and correct.

#. When the Board is heavy of the court and what it is given out of the date 27th August, 1987, on which date, the matter in question was at sr.no.195 thereof, I find sufficient merits in the contention of the learned counsel for the petitioner that all the matters are difficult to be taken, dealt with and decided by the said court. The normal working hours of the court may not be more than 300 minutes. This is what I am stating on the basis of working hours of this court. Even if in a matter the court takes three minutes, still it is not possible for the court to decide all the matters on Board of that date. It is too difficult for the courts which are exercising original jurisdiction to decide a suit within three minutes. In the facts of this case, it is to be accepted that on the date, i.e. 27th August, 1987, the Presiding Officer of the Board of Nominees court has kept only part heard matters with him and the rest of the cause list has been discharged. Dismissal of the suit for non prosecution of the petitioner in these facts is wholly arbitrary and unjustified. The Tribunal's approach in the matter is also wholly perverse. Against the order of dismissal of suit for non prosecution, it is true that the petitioner had another remedy of filing of application for restoration, but its right to file appeal is also there. Availability of remedy of filing of restoration application in the matter may not be taken to be a ground to dismiss the appeal. Appeal is a right under the statute and in this manner and fashion in which what it has been done, the appeal should not have been

dismissed. Be that as it may, as I am satisfied on merits of the matter that the dismissal of the suit for non prosecution by the Board of Nominees was wholly arbitrary and unjustified, I do not consider it to be appropriate to remand the matter back to the Tribunal with the direction to the Tribunal to decide the appeal on merits.

#. In the result, this special civil application succeeds and the same is allowed and the order of the Board of Nominees dated 27th August, 1987, in the Arbitration Suit No.1269 of 1984 dismissing the suit for non prosecution is quashed and set aside. The suit is ordered to be restored to its original number. The Board of Nominees is directed to decide the suit on merits. It is a suit of the year 1984. The Board of Nominees is further directed to decide the same within a period of six months from the date of receipt of writ of this order. Rule is made absolute in aforesaid terms with no order as to costs.

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(sunil)